

HYDE & SWIGART  
411 Camino Del Rio South, Suite 301  
San Diego, CA 92108

**KAZEROUNI LAW GROUP, APC**

Abbas Kazerounian, Esq. (SBN: 249203)  
ak@kazlg.com

S. Mohammad Kazerouni, Esq. (SBN: 252835)  
mike@kazlg.com

Assal Assassi, Esq. (SBN: 274249)  
assal@kazlg.com

Matthew M. Loker, Esq. (SBN: 279939)  
ml@kazlg.com

2700 N. Main Street, Ste. 1000

Santa Ana, California 92705

Telephone: (800) 400-6808

Facsimile: (800) 520-5523

**HYDE & SWIGART**

Robert Hyde, Esq. (SBN: 227183)

bob@westcoastlitigation.com

Joshua B. Swigart, Esq. (SBN: 225557)

josh@westcoastlitigation.com

411 Camino Del Rio South, Suite 301

San Diego, CA 92108

Telephone: (619) 233-7770

Facsimile: (619) 297-1022

*Attorneys for Plaintiff,*

Thomas Roche

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

**THOMAS ROCHE,**

Plaintiff,

v.

**PORTFOLIO RECOVERY  
ASSOCIATES, LLC; AND, HUNT &  
HENRIQUES,**

Defendants.

Case No.: **'12CV0835 L WMC**

**COMPLAINT FOR DAMAGES FOR  
VIOLATIONS OF:**

**I. THE ROSENTHAL FAIR DEBT  
COLLECTION PRACTICES ACT CAL.  
CIV. CODE §§ 1788-1788.32; AND,**

**II. THE FAIR DEBT COLLECTION  
PRACTICES ACT 15 U.S.C. §§ 1692-  
1692(P)**

**JURY TRIAL DEMANDED**

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**INTRODUCTION**

1. The United States Congress has found abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors, and has determined that abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy. Congress wrote the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq, to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.
2. The California legislature has determined that the banking and credit system and grantors of credit to consumers are dependent upon the collection of just and owing debts and that unfair or deceptive collection practices undermine the public confidence that is essential to the continued functioning of the banking and credit system and sound extensions of credit to consumers. The Legislature has further determined that there is a need to ensure that debt collectors exercise this responsibility with fairness, honesty, and due regard for the debtor's rights and that debt collectors must be prohibited from engaging in unfair or deceptive acts or practices.<sup>1</sup>
3. THOMAS ROCHE ("Plaintiff"), by Plaintiff's attorneys, brings this action to challenge the actions of PORTFOLIO RECOVERY ASSOCIATES, LLC (individually as "Portfolio Recovery" or collectively as "Defendants"); and, HUNT & HENRIQUES (individually as "H&H" or collectively as "Defendants"), with regard to attempts by Defendants, debt collectors, to unlawfully and abusively collect a debt allegedly owed by Plaintiff, and this conduct caused Plaintiff damages.
4. Unless otherwise indicated, the use of any Defendants' name in this Complaint includes all agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers of that defendant named.
5. Plaintiff makes these allegations on information and belief, with the exception of those

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<sup>1</sup> Cal. Civ. Code §§ 1788.1 (a)-(b)

allegations that pertain to a plaintiff, or to a plaintiff's counsel, which Plaintiff alleges on personal knowledge.

6. While many violations are described below with specificity, this Complaint alleges violations of the statutes cited in their entirety.

7. Unless otherwise stated, Plaintiff alleges that any violations by Defendants were knowing and intentional, and that Defendants did not maintain procedures reasonably adapted to avoid any such violation.

#### JURISDICTION AND VENUE

8. Jurisdiction of this Court arises pursuant to 28 U.S.C. §1331 and 15 U.S.C. § 1692k.

9. This action arises out of Defendant's violations of (i) the Rosenthal Fair Debt Collection Practices Act, California Civil Code §§ 1788-1788.32 ("RFDCPA"); and, (ii) the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692(p) ("FDCPA").

10. Because Defendants do business within the State of California, personal jurisdiction is established.

11. Venue is proper pursuant to 28 U.S.C. § 1391.

#### PARTIES

12. Plaintiff is a natural person who resides in the City of Torrance, County of Los Angeles, State of California, from whom a debt collector sought to collect a consumer debt which was due and owing or alleged to be due and owing from Plaintiff, and is a "debtor" as that term is defined by California Civil Code § 1788.2(h). In addition, Plaintiff is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).

13. Defendant, Portfolio Recovery, is a company operating from the State of Delaware.

14. Defendant, H&H, is a company operating from the State of California.

15. Plaintiff is informed and believes, and thereon alleges, that Defendants, in the ordinary course of business, regularly, on behalf of themselves or others, engage in "debt collection" as that term is defined by California Civil Code § 1788.2(b), and are therefore "debt collectors" as that term is defined by California Civil Code § 1788.2(c) and 15 U.S.C. § 1692a(6).

16. This case involves money, property or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction. As such, this action arises out of a “consumer debt” and “consumer credit” as those terms are defined by Cal. Civ. Code § 1788.2(f) and a “debt” as that term is defined by 15 U.S.C. 1692a(5).

#### FACTUAL ALLEGATIONS

17. At all times relevant, Plaintiff is an individual residing within the State of California.

18. Plaintiff is informed and believes, and thereon alleges, that at all times relevant, Defendants conducted business in the State of California.

19. In or about February 1999, Plaintiff allegedly incurred financial obligations to the original creditor, Wells Fargo Bank, that were money, property, or their equivalent, which is due or owing, or alleged to be due or owing, from a natural person to another person and were therefore “debt(s)” as that term is defined by California Civil Code §1788.2(d), and a “consumer debt” as that term is defined by California Civil Code §1788.2(f) and 15 U.S.C. § 1692a(6).

20. Sometime thereafter, Plaintiff allegedly fell behind in the payments allegedly owed on the alleged debt. Plaintiff currently takes no position as to whether or not this alleged debt was actually owed.

21. From 2008 through the present, Plaintiff has received telephone calls and written letters from Defendant. These telephone calls and written letters were “communications” as 15 U.S.C. § 1692a(2) defines that term, and a “debt collection” as that phrase is defined by Cal. Civ. Code § 1788.2(b) and 15 U.S.C. § 1692a(6).

22. Subsequently, but before April 18, 2011, Wells Fargo, retained Defendant, Portfolio Recovery, a debt collector pursuant to the FDCPA and the RFDCPA who retained Defendant, H&H, also debt collectors pursuant to the FDCPA and the RFDCPA, to proceed with legal action against Plaintiff for the collection of Plaintiff’s alleged financial obligations.

23. Pursuant to the instructions of Defendant, Portfolio Recovery, Defendant, H&H, in the name of Portfolio Recovery, filed a state collection case against Plaintiff on April 18, 2011

1 in the Torrance Superior Court based on Plaintiff's consumer account that was allegedly in  
2 default, Case No. 11C01501.

3 24. The purpose of the filing of the state case was not to pursue legitimate litigation, but to  
4 cause Plaintiff financial hardship with the intent of coercing Plaintiff to pay the alleged  
5 debt or merely hoping for Plaintiff's default.

6 25. In the state case, Defendants brought a cause of action only for account stated.

7 26. This cause of action had no merit, or evidentiary support, and was brought for the sole  
8 purpose of coercing Plaintiff to pay this alleged disputed debt.

9 27. In the complaint filed in state court, Defendants alleged that an "Account Stated" had  
10 previously been entered into between Plaintiff and Wells Fargo when, in fact, this was not  
11 true.

12 28. In this action, Defendants used false, deceptive, or misleading representations or means in  
13 connection with the collection of a debt, in violation of 15 U.S.C. § 1692e and 15 U.S.C. §  
14 1692e(10) because an action under an account stated requires that parties forgo any  
15 previous contract and, *instead*, enter into a new contract, which never happened in this  
16 case, a fact that Defendants either knew or should have reasonably known. In addition, 15  
17 U.S.C. §§ 1692e and 1692e(10) are incorporated into the RFDCPA through Cal. Civ. Code  
18 § 1788.17. Thus, Defendant has also violated Cal. Civ. Code § 1788.17.

19 29. Through this conduct, Defendants used an unfair or unconscionable means to collect or  
20 attempt to collect an alleged debt when Defendants did not have the legal right to collect  
21 the alleged debt from Plaintiff. Consequently, Defendants violated 15 U.S.C. § 1692f(1).  
22 In addition, 15 U.S.C. § 1692f(1) is incorporated into the RFDCPA through Cal. Civ. Code  
23 § 1788.17. Thus, Defendant has also violated Cal. Civ. Code § 1788.17.

24 30. Defendants maintained this litigation up to the point of being called for trial while all along  
25 knowing that Defendants never intended to actually go through with the trial, but instead,  
26 continued as an attempt to coerce a settlement.

27 31. Through this conduct, Defendants used false representations or deceptive means to collect  
28 or attempt to collect a debt or attempt to collect a debt or to obtain information concerning

a consumer. Consequently, Defendants violated 15 U.S.C. §§ 1692e; and, 1692e(10). In addition, 15 U.S.C. §§ 1692e and 1692e(10) are incorporated into the RFDCPA through Cal. Civ. Code § 1788.17. Thus, Defendant has also violated Cal. Civ. Code § 1788.17.

32. Through this conduct, Defendants used an unfair or unconscionable means to collect or attempt to collect any debt. Consequently, Defendants violated 15 U.S.C. § 1692f. In addition, 15 U.S.C. § 1692f is incorporated into the RFDCPA through Cal. Civ. Code § 1788.17. Thus, Defendant has also violated Cal. Civ. Code § 1788.17.

33. Through this action, Defendants caused Plaintiff to incur further litigation fees and costs.

34. It was never the intent of Defendants to proceed to trial, as this activity was only meant to cause Plaintiff further expenses and coerce a settlement.

35. Through this conduct, Defendants threatened to take action that cannot be legally taken or that is not intended to be taken. Consequently, Defendants violated 15 U.S.C. § 1692e(5). In addition, 15 U.S.C. § 1692e(5) is incorporated into the RFDCPA through Cal. Civ. Code § 1788.17. Thus, Defendant has also violated Cal. Civ. Code § 1788.17.

36. Through this conduct, Defendants used an unfair or unconscionable means to collect or attempt to collect any debt. Consequently, Defendants violated 15 U.S.C. § 1692f. In addition, 15 U.S.C. § 1692f(1) is incorporated into the RFDCPA through Cal. Civ. Code § 1788.17. Thus, Defendant has also violated Cal. Civ. Code § 1788.17.

37. Pursuant to Code of Civil Procedure §128.7(b)(3), Portfolio Recovery and H&H certified to Plaintiff and the Court that Discover's allegations of account stated had evidentiary support, when in fact Defendants did not possess any evidence of any account stated, which is a written contract between the parties.

38. Though, Defendants did not possess such evidence, Defendants could have complied with CCP § 128.7(b)(3) by stating in the complaint that they believed in good faith that such evidence reasonably could be obtained. However, Defendants intentionally made no such statement regarding their lack of possession of evidence in an effort to mislead Plaintiff who would be justified in relying on CCP § 128.7(b)(3).

39. Through this conduct, Defendants used a false, deceptive, or misleading representation or

means in connection with the collection of a debt. Consequently, Defendants violated 15 U.S.C. § 1692e and 15 U.S.C. § 1692e(10). In addition, 15 U.S.C. §§ 1692e; and, 1692e(10) are incorporated into the RFDCPA through Cal. Civ. Code § 1788.17. Thus, Defendant has also violated Cal. Civ. Code § 1788.17.

40. Through this conduct, Defendants used an unfair or unconscionable means to collect or attempt to collect any debt. Consequently, Defendants violated 15 U.S.C. § 1692f. In addition, 15 U.S.C. § 1692f(1) is incorporated into the RFDCPA through Cal. Civ. Code § 1788.17. Thus, Defendant has also violated Cal. Civ. Code § 1788.17.

41. Prior to trial, rather than follow through on their threats, Defendants moved to dismiss the case against Plaintiff *without prejudice* on January 30, 2012, thereby subjecting Plaintiff to a future threat of litigation and denying Plaintiff the ability to vindicate himself through the action.

42. None of the Defendants ever intended to take either action to trial, but used the threat of trial as a debt collection tactic to collect the alleged debt from Plaintiff through false, deceptive, and misleading means and threats to take action Defendants never intended to take.

43. Through this conduct, Defendants threatened to take action that cannot be legally taken or that is not intended to be taken. Consequently, Defendants violated 15 U.S.C. § 1692e(5). In addition, 15 U.S.C. § 1692e(5) is incorporated into the RFDCPA through Cal. Civ. Code § 1788.17. Thus, Defendant has also violated Cal. Civ. Code § 1788.17.

44. Through this conduct, Defendants used an unfair or unconscionable means to collect or attempt to collect an alleged debt when Defendants did not have the legal right to collect the alleged debt from Plaintiff. Consequently, Defendants violated 15 U.S.C. § 1692f(1). In addition, 15 U.S.C. § 1692f(1) is incorporated into the RFDCPA through Cal. Civ. Code § 1788.17. Thus, Defendant has also violated Cal. Civ. Code § 1788.17.

45. Through this conduct, Defendant took actions against Plaintiffs concerning the alleged debt in violation of the statute discussed above. Consequently, Defendant violated Cal. Civ. Code § 1788.17. In addition, Defendant violated 15 U.S.C. §§ 1692e(5); 1692e(10); and,

1 1692f(1)

2 **CAUSES OF ACTION CLAIMED BY PLAINTIFF**

3 **COUNT I**

4 **VIOLATION OF THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT**

5 **Cal. Civ. Code §§ 1788-1788.32 (RFDCPA)**

6 [Against All Defendants]

7 46. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though  
8 fully stated herein.

9 47. The foregoing acts and omissions constitute numerous and multiple violations of the  
10 RFDCPA.

11 48. As a result of each and every violation of the RFDCPA, Plaintiff is entitled to any actual  
12 damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages for a knowing or  
13 willful violation in the amount up to \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b);  
14 and reasonable attorney's fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from each  
15 Defendant individually.

16 **COUNT II**

17 **VIOLATION OF THE FAIR DEBT COLLECTION PRACTICES ACT**

18 **15 U.S.C. §§ 1692-1692(p) (FDCPA)**

19 [Against All Defendants]

20 49. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though  
21 fully stated herein.

22 50. The foregoing acts and omissions constitute numerous and multiple violations of the  
23 FDCPA.

24 51. As a result of each and every violation of the FDCPA, Plaintiff is entitled to any actual  
25 damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages for a knowing or willful  
26 violation in the amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and  
27 reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from each  
28 Defendant individually.



**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays that judgment be entered against Defendants for:

- an award of actual damages, in an amount to be determined at trial, pursuant to Cal. Civ. Code § 1788.30(a), against each named Defendant individually;
- an award of actual damages, in an amount to be determined at trial, pursuant to 15 U.S.C. § 1692k(a)(1), against each named Defendant individually;
- an award of statutory damages of \$1,000.00, pursuant to Cal. Civ. Code § 1788.30(b), against each named Defendant individually;
- an award of statutory damages of \$1,000.00, pursuant to 15 U.S.C. § 1692k(a)(2)(A);, against each named Defendant individually;
- an award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ. Code § 1788.30(c), against each named Defendant individually.
- an award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1692k(a)(3), against each named Defendant individually; and,
- any and all other relief that this Court deems just and proper.

Dated: April 5, 2012

Respectfully submitted,

**HYDE & SWIGART**

By: /s/ Joshua B. Swigart  
Joshua B. Swigart, Esq.  
Attorney for Plaintiff

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**TRIAL BY JURY**

52. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: April 5, 2012

Respectfully submitted,

**HYDE & SWIGART**

By: /s/ Joshua B. Swigart  
Joshua B. Swigart, Esq.  
Attorney for Plaintiff

HYDE & SWIGART  
411 Camino Del Rio South, Suite 301  
San Diego, CA 92108

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Thomas Roche

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Hyde & Swigart  
411 Camino Del Rio South Suite 301, San Diego, CA 92108

**DEFENDANTS**

Portfolio Recovery Associates, LLC; and, Hunt &amp; Henriques

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

Attorneys (If Known)

**'12CV0835 L WMC****II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |  | PTF                        | DEF                        |
|---|----------------------------|----------------------------|--|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated <i>or</i> Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated <i>and</i> Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation   | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights <b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
**15 U.S.C. § 1692 et seq.**

Brief description of cause:  
**Unfair Debt Collection Practices**

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$**  
**75,001.00+**

CHECK YES only if demanded in complaint:  
**JURY DEMAND:** ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE

SIGNATURE OF ATTORNEY OF RECORD

04/05/2012

s/Joshua B. Swigart

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553  
Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.